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BellSouth Telecommunications, Inc.

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Nashville, TN 37201-3300

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Guy M. Hicks
General Counsel

May 6, 2005

T.B.A. DOCKET ROOM

615 214 6301
Fax 615 214 7406

VIA HAND DELIVERY

Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Petition of BSLD to Amend its Certificate of Public Convenience and
Necessity to Provide Facilities-Based Interexchange Services in the State
of Tennessee*
Docket No. 25-00137

Dear Chairman Miller:

Enclosed are the original and fourteen copies of BellSouth Long Distance, Inc.'s
*Petition to Amend its Certificate of Public Convenience and Necessity to Provide
Facilities-Based Interexchange Services in the State of Tennessee.*

Very truly yours,

Guy M. Hicks
on behalf of BellSouth Long Distance, Inc.

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In the matter of

Petition of BellSouth Long Distance, Inc. to)	
Amend Its Certificate of Public Convenience)	
and Necessity to Provide Facilities-Based)	Docket No. _____
Interexchange Services in the State of Tennessee)	

**PETITION OF BELL SOUTH LONG DISTANCE, INC. TO AMEND ITS
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO PROVIDE
FACILITIES-BASED INTEREXCHANGE SERVICE**

BellSouth Long Distance, Inc., pursuant to Tenn. Code Ann. § 65-4-201 and Tennessee Regulatory Authority (the "Authority") Rule 1220-4-2-.57 hereby submits this Petition seeking to amend its Certificate of Public Convenience and Necessity (CCN) to provide facilities based interexchange services.

In its Orders dated May 4, 1999 in Docket 97-01404 and January 28, 2003, in Docket 02-01169, the Authority found that BellSouth Long Distance, Inc. satisfied the managerial, financial and technical requirements set forth in Tenn. Code Ann. § 65-4-201 (c) and that BellSouth Long Distance, Inc. had filed an acceptable Small and Minority-Owned Telecommunication Business Participation Plan pursuant to Tenn. Code Ann. § 65-5-212. Based on its review of the Company's Application and subsequent request to modify BellSouth Long Distance, Inc.'s Certificate of Public Convenience and Necessity, the Authority granted the Company a CNN to provide interexchange toll services as set forth in Section 271 (g) of the Telecommunications Act of 1996 on a resale basis.

By this petition, BellSouth Long Distance, Inc. seeks to amend its CCN to allow it to provide facilities based operator and interexchange toll services in Tennessee. The Authority's approval of this Application will permit BellSouth Long Distance, Inc. to continue to provide its customers in Tennessee with the same high quality of service they receive today.

In support of its Application, BellSouth Long Distance, Inc. is providing the following information:

1. The full name and address of the Applicant is:

BellSouth Long Distance, Inc.
400 Perimeter Center Terrace, Suite 400
Atlanta, Georgia 30346
Telephone: (770) 352-3000

2. Pleadings, notices, orders, and other correspondence and communications regarding this Petition and any proceeding held thereon should be addressed to the undersigned counsel, as well as to:

Mario L. Soto
President
400 Perimeter Center Terrace, Suite 400
Atlanta, Georgia 30346
(678) 443-3937 (phone)
(678) 443-3470 (fax)
mario.soto@bellsouth.com (e-mail)

3. Contact name and address at the Company is:

Mary Jean Dennis
Director-Business Implementation & Compliance
400 Perimeter Center Terrace, Suite 350
Atlanta, Georgia 30346
(770) 352-3077 (phone)
(678) 443-3470 (fax)
mary.dennis@bellsouth.com (e-mail)

4. Corporate information

BellSouth Long Distance, Inc. was incorporated in the state of Delaware on March 13, 1996. A copy of BellSouth Long Distance, Inc.'s Articles of Incorporation and amendments thereto are provided in **Exhibit A**. A copy of BellSouth Long Distance Inc.'s authority to transact business in the State of Tennessee is provided in **Exhibit B**. The names and addresses of the principal corporate officers are identified in **Exhibit C**. There are no officers in Tennessee. The biographies of the principal senior management and other key technical staff are contained in **Exhibit D**. Included as **Exhibit E** is a copy of the TRA's Order in Docket No. 02-01169, Order Approving Modification of Certificate of Public Convenience and Necessity, granting BellSouth Long Distance Inc.'s Application to provide interLATA long distance services in Tennessee, contingent upon the FCC's approval of BellSouth's Section 271 application for Tennessee.

5. BellSouth Long Distance Inc. possesses the managerial, technical, and financial ability to provide facilities based interexchange long distance service in the State of Tennessee as demonstrated below:

A. Managerial/Technical Ability:

As shown in **Exhibit D** of this Petition, BellSouth Long Distance, Inc. has the managerial expertise to provide facilities-based interexchange telecommunications services in Tennessee. As described in the attached biographical information, BellSouth Long Distance, Inc.'s management team has extensive management, business and technical expertise in telecommunications. In addition, the Authority has found that BellSouth Long Distance, Inc. possesses such expertise in authorizing the provision of various services in Tennessee, including the provision of resale interexchange services as well as local exchange services. (See Order Granting Certificate of Public Convenience and Necessity dated February 18, 2005 in Docket No. 03-00602.)

B. Financial Qualifications:

The Company will rely upon the financial qualifications of its parent, BellSouth Corporation ("BellSouth"). In support of its financial qualifications, BellSouth Long Distance, Inc. submits the fiscal year ended December 31, 2004 SEC Form 10K and the 2004 Annual Report of BellSouth (**Exhibit F**). **Exhibit F** summarizes the recent financial performance of the BellSouth, including the results of BellSouth Long Distance, Inc. This information includes income statements, balance sheets, and statements of cash flows for year-end 2004. Thus, BellSouth Long Distance, Inc. has the financial resources necessary to operate as a facilities-based interexchange carrier.

6. Services to be offered by Petitioner

As a result of increased toll traffic volumes in Tennessee, BellSouth Long Distance, Inc. plans to install a new toll switch to be located and maintained in Nashville. This switch will allow BellSouth Long Distance, Inc. to offer facilities-based interexchange services throughout Tennessee, in accordance with all regulations as set forth by the Authority and in accordance with all applicable State statutes. A new toll switch will also allow BellSouth Long Distance, Inc. to continue to provide reliable service to its customers in Tennessee.

7. Countywide Calling

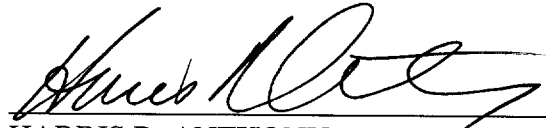
The Company has and will continue to comply with TCA § 65-21-114, toll-free telephone service within counties.

CONCLUSIONS:

BellSouth Long Distance, Inc. respectfully requests that the Authority grant its Petition to Amend its Certificate of Public Convenience and Necessity to provide Facilities-Based Interexchange Services throughout the State of Tennessee. For the reasons stated above, granting of this Petition will provide significant benefit to Tennessee telecommunications consumers by allowing BellSouth Long Distance, Inc. to continue to provide the highest level of service to its customers.

Respectfully submitted this 3 day of May, 2005

BELLSOUTH LONG DISTANCE, INC



HARRIS R. ANTHONY

Vice President and General Counsel

400 Perimeter Center Terrace

Suite 350

Atlanta, Georgia

770-352-3116

harris.anthony@bellsouth.com

Office of the Secretary of State

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "BELLSOUTH LONG DISTANCE, INC.", FILED IN THIS OFFICE ON THE THIRTEENTH DAY OF MARCH, A.D. 1996, AT 9:01 O'CLOCK A.M.

A CERTIFIED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS FOR RECORDING.



A handwritten signature in cursive script, reading "Edward J. Freel".

Edward J. Freel, Secretary of State

7602136 8100

760072554

AUTHENTICATION:

7864442

DATE:

03-13-96

**CERTIFICATE OF INCORPORATION
OF
BELLSOUTH LONG DISTANCE, INC.**

1.

The name of the corporation is BellSouth Long Distance, Inc.

2.

The address of the initial registered office of the corporation in the State of Delaware shall be 1013 Centre Road, City of Wilmington, County of New Castle, Delaware 19805-1297; and the name of the initial registered agent of the corporation at such address is The Prentice-Hall Corporation System, Inc.

3.

The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

4.

The aggregate number of shares of stock which the corporation shall have authority to issue is One Thousand (1,000) shares of Common Stock, which shall have no par value. Said shares of Common Stock may be issued by the corporation for such consideration as shall be fixed from time to time by the Board of Directors of the corporation.

5.

The corporation shall have perpetual duration.

6.

The name and address of the Incorporator is Jim O. Llewellyn, 1800 Campanile, 1155 Peachtree Street, N.E., Atlanta, Georgia 30309-3610.

7.

The initial Board of Directors of the Corporation shall consist of one (1) member, whose name and address is as follows:

William F. Reddersen
Suite 1903
1155 Peachtree Street, N.E.
Atlanta, Georgia 30309-3610

8.

Whenever a compromise or arrangement is proposed between this corporation and its creditors or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this corporation under the provisions of §291 of Title 8 of the Delaware Code or on the application of trustees in dissolution or of any receiver or receivers appointed for this corporation under the provisions of §279 of Title 8 of the Delaware Code order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to an compromise or arrangement and to any reorganization of this corporation as consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said

application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

9.

For the management of the business and for the conduct of the affairs of the corporation, and in further definition, limitation, and regulation of the powers of the corporation and of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

1. The management of the business and the conduct of the affairs of the corporation shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed by, or in the manner provided in, the Bylaws. The phrase "whole Board" and the phrase "total number of directors" shall be deemed to have the same meaning, to wit, the total number of directors which the corporation would have if there were no vacancies. No election of directors need be by written ballot;

2. After the original or other Bylaws of the corporation have been adopted, amended, or repealed, as the case may be, in accordance with the provisions of §109 of the General Corporation Law of the State of Delaware, and, after the corporation has received any payment for any of its stock, the power to adopt, amend, or repeal the Bylaws of the corporation may be exercised by the Board of Directors of the corporation; and,

3. Whenever the corporation shall be authorized to issue only one class of stock, each outstanding share shall entitle the holder thereof to notice of, and the right to vote at, any meeting of stockholders. Whenever the corporation shall be authorized to issue more than one class of stock, no outstanding share of any class of stock which is denied voting power under

the provisions of the Certificate of Incorporation shall entitle the holder thereof to the right to vote at any meeting of stockholders except as the provisions of paragraph (2) of subsection (b) of §242 of the General Corporation Law of the State of Delaware shall otherwise require; provided, that no share of any such class which is otherwise denied voting power shall entitle the holder thereof to vote upon the increase or decrease in the number of authorized shares of said class.

10.

The personal liability of the directors of the corporation is hereby eliminated to the fullest extent permitted by the provisions of paragraph (7) of subsection (b) of §102 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented.

11.

The corporation shall, to the fullest extent permitted by the provisions of §145 of the General Corporation Law of the State of Delaware, as the same may be amended and supplemented, indemnify any and all persons whom it shall have power to indemnify under said section from and against any and all of the expenses, liabilities, or other matters referred to in or covered by said section, and the indemnification provided for herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any Bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

12.

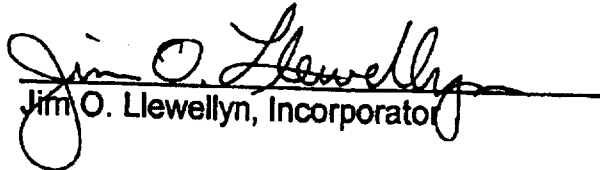
Any action that is required or permitted to be taken at a meeting of the shareholders may be taken without a meeting if the action is taken by

persons who would be entitled to vote at a meeting shares having voting power to cast not less than the minimum number (or numbers, in the case of voting by groups) of votes that would be necessary to authorize or take such action at a meeting at which all shareholders entitled to vote were present and voted. The action must be evidenced by one or more written consents describing the action taken, signed by shareholders entitled to take action without a meeting and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

13.

From time to time any of the provisions of this Certificate of Incorporation may be amended, altered, or repealed, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted in the manner and at the time prescribed by said laws, and all rights at any time conferred upon the stockholders of the corporation by this Certificate of Incorporation are granted subject to the provisions of this Article.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Incorporation this 13th day of March, 1996.


Jim O. Llewellyn, Incorporator

Secretary of State
Division of Business Services
312 Eighth Avenue North
6th Floor, William R. Snodgrass Tower
Nashville, Tennessee 37243

ISSUANCE DATE: 04/20/2005
REQUEST NUMBER: 05110112
TELEPHONE CONTACT: (615) 741-6488

CHARTER/QUALIFICATION DATE: 08/29/1996
STATUS: ACTIVE
CORPORATE EXPIRATION DATE: PERPETUAL
CONTROL NUMBER: 0317009
JURISDICTION: DELAWARE

TO:
CFS
8161 HIGHWAY 100
#172
NASHVILLE, TN 37221

REQUESTED BY:
CFS
8161 HIGHWAY 100
#172
NASHVILLE, TN 37221

CERTIFICATE OF AUTHORIZATION

I, RILEY C DARNELL, SECRETARY OF STATE OF THE STATE OF TENNESSEE DO HEREBY CERTIFY THAT
"BELLSOUTH LONG DISTANCE, INC.",

A CORPORATION FORMED IN THE JURISDICTION SET FORTH ABOVE, IS AUTHORIZED TO
TRANSACTION BUSINESS IN THIS STATE;
THAT ALL FEES, TAXES, AND PENALTIES OWED TO THIS STATE WHICH AFFECT THE
AUTHORIZATION OF THE CORPORATION HAVE BEEN PAID;
THAT THE MOST RECENT CORPORATION ANNUAL REPORT REQUIRED HAS BEEN FILED
WITH THIS OFFICE; AND
THAT AN APPLICATION FOR CERTIFICATE OF WITHDRAWAL HAS NOT BEEN FILED.

FOR: REQUEST FOR CERTIFICATE

ON DATE: 04/20/05

FROM:
CFS
8161 HIGHWAY 100
#172
NASHVILLE, TN 37221-0000

RECEIVED: FEES \$160.00 \$0.00
TOTAL PAYMENT RECEIVED: \$160.00

RECEIPT NUMBER: 00003708871
ACCOUNT NUMBER: 00101230



SS-4458

Riley C. Darnell

RILEY C. DARNELL
SECRETARY OF STATE

BELLSOUTH LONG DISTANCE, INC.
NAME AND ADDRESS OF BELLSOUTH LONG DISTANCE, INC. OFFICERS

Mario L. Soto, President

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William D. Schneider, Secretary

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Atlanta, Georgia 30309
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Facsimile: (404) 249 - 2126

Kelda M. Williams, Assistant Treasurer
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Facsimile: (404) 249 - 2126

BELLSOUTH LONG DISTANCE, INC.
NAME AND ADDRESS OF BELLSOUTH LONG DISTANCE, INC. OFFICERS
(Continued)

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Atlanta, Georgia 30309
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Facsimile: (404) 249 - 5905

DESCRIPTION OF SENIOR MANAGEMENT OF APPLICANT

Mario L. Soto, President

Mario Soto is President of BellSouth Long Distance, Inc. ("BSLD"). Mr. Soto has over thirty years experience in the telecommunications industry. He has worked for Southern Bell Telephone Company, AT&T Corporation and different affiliates within BellSouth Corporation. Mr. Soto has held various positions in Engineering, Pricing, Market Management, Product Management and Regulatory within BellSouth and AT&T.

Mr. Soto attended the University of Florida where he earned a Bachelor of Science in Electrical Engineering Degree in 1970 and obtained a Master of Electrical Engineering Degree in 1971. He also earned a Master of Business Administration Degree from Georgia State University in 1980.

Hamilton E. (Bob) Gray, Network Vice President

Mr. Gray, Network Vice President, is responsible for planning, engineering, installation and operation of the BellSouth Long Distance network. He is also responsible for the BSLD telecommunications fraud management group.

Mr. Gray was assigned to the Bellsouth Long Distance project in August of 1995. Prior to his current assignment, he was Director - Alternate Network Technical Planning for BellSouth Europe in Brussels, Belgium where he was responsible for network development in support of BellSouth's competitive business ventures throughout the European continent in 1994 and 1995. Before his international assignment, he was Operations Manager – Network Fundamental Planning for BellSouth Telecommunications, Inc. responsible for switching and transmission network planning for BellSouth Telecommunications' nine state territory from 1988-1994. Mr. Gray also served a one year special assignment in Washington, DC representing BellSouth on President Regan's White House Staff in 1987. Mr. Gray began his career with BellSouth in June of 1972.

Mr. Gray holds a Bachelor of Science degree in Electrical Engineering from Louisiana State University and a Master of Business Administration degree from the University of Alabama.

Harris R. Anthony, General Counsel

Mr. Anthony, General Counsel, arrived at BellSouth Long Distance in early 2000, but has worked in BellSouth's Legal Department since 1977. He began his career with BellSouth as a labor attorney, then was BST's General Counsel for Georgia and, later, BST General Counsel for

Florida. He returned to Atlanta in 1994, where he assumed responsibility for BellSouth's Commercial Attorneys.

Mr. Anthony graduated Magna Cum Laude from Colgate University and went on to earn his Juris Doctorate from Duke University School of Law.

Sam Hastings, Vice President – Customer Operations and Sales Support

Sam Hastings, Vice President – Customer Operations and Sales Support, is responsible for long distance service assurance, billing data integrity, customer care and sales center support. Before his current assignment, Mr. Hastings was Vice President-Marketing, Mass Market & Wholesale Services, responsible for development of Consumer and Small Business long distance products and services; and for sales, marketing and operations of BSLD's wholesale business.

In addition, Mr. Hastings served as Sales Assistant Vice President of BST's Interconnection Services wireless segment. In this position, he was responsible for sales of interconnection services to wireless, PCS and paging customers.

Before joining BellSouth, Mr. Hastings was a senior manager at Nortel Networks in Atlanta where he was responsible for the BellSouth Sales Center. He effectively managed many resources in order to design, manage and coordinate the processes that interface with multiple BellSouth organizations.

Mr. Hastings holds a Bachelor's Degree in Business Administration from Georgia State University and received his Master's Degree in Business Administration from Georgia State University in 1994.

William D. Schneider, Secretary

William Schneider, Secretary, has been a part of the BellSouth Long Distance team since 2003. Prior to joining BellSouth Long Distance, Mr. Schneider held several positions of increasing responsibility within the BellSouth Finance organization including Controller, BellSouth Technology Group; Controller, BellSouth Affiliated Services Corporation; Manager, Regulatory Accounting; Assistant Manager, External Reporting; and Corporate Books Manager at BellSouth Corporation. Mr. Schneider worked at Deloitte & Touche prior to joining BellSouth.

Mr. Schneider holds Master of Accountancy and BBA degrees from the University of Georgia and is a Certified Public Accountant.

Mike Reagan, Chief Information Officer

Mike Reagan, Chief Information Officer, was part of the BellSouth Long Distance Information Technology ("IT") organization from 1996 to 2001. Prior to joining BellSouth, Mr. Reagan held a number of positions with Sprint and MCI. In all, Mr. Reagan has been in telecommunications for 19 years and has held positions in network engineering, sales support, product development and information technology.

As CIO, Mr. Reagan is responsible for all IT planning and strategy, architecture, application development, application support, operations and project management for BellSouth Long Distance. Mr. Reagan has a Bachelor's Degree in Electrical Engineering and Mathematics from Geneva College in Pennsylvania.

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 28, 2002

IN RE:

APPLICATION OF BELL SOUTH LONG
DISTANCE, INC. TO EXPAND ITS CERTIFICATE
OF CONVENIENCE AND NECESSITY TO
PROVIDE RESOLD INTERLATA SERVICE IN
TENNESSEE

DOCKET NO.
02-01169

ORDER APPROVING MODIFICATION OF CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate, and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority" or "TRA"), the voting panel assigned to this docket, at the regularly scheduled Authority Conference held on November 18, 2002, for consideration of the *Application of BellSouth Long Distance, Inc. for Approval of a Modified Certificate of Public Convenience and Necessity* (the "Application"), which was filed on October 17, 2002.

BellSouth Long Distance, Inc.'s August 1, 1997 Application

On August 1, 1997, BellSouth Long Distance, Inc. ("BSLD") filed with the TRA an application, pursuant to Tenn. Code Ann. § 65-4-201, for authority to operate in Tennessee as a reseller of long distance service. In its August 1, 1997 application, which was assigned to Docket No. 97-01404, BSLD requested authority to provide incidental interLATA services not precluded by Section 271 of the Federal Telecommunications Act

of 1996 (the "Act")¹ and as specifically defined in Section 271(g).² BSLD also requested that the TRA grant it the authority to provide resold intraLATA toll services and the full array of resold interLATA services contingent upon the Federal Communications Commission's ("FCC") approval of BellSouth's Section 271 application for Tennessee.³ In its Section 271 application, BellSouth is requesting FCC approval, pursuant to Section 271 of the Act, to provide long distance service in Tennessee.⁴ In conjunction with this application filed with the FCC, BellSouth requested a recommendation from the TRA that the FCC grant such approval, in accordance with Section 271(d)(2)(B) of the Act.⁵ The TRA considered this request in TRA Docket No. 97-00309.

¹ 47 U.S.C. § 271.

² Section 271(b)(3) of the Act, 47 U.S.C. § 271(b)(3), provides that a Bell operating company may provide "incidental interLATA services" as defined in Section 271(g), 47 U.S.C. § 271(g). That Section defines such services as "the interLATA provision by a Bell operating company or its affiliate":

- (1)(A) of audio programming, video programming, or other programming services to subscribers to such services of such company or affiliate;
- (B) of the capability for interaction by such subscribers to select or respond to such audio programming, video programming, or other programming services;
- (C) to distributors of audio programming or video programming that such company or affiliate owns or controls, or is licensed by the copyright owner of such programming (or by an assignee of such owner) to distribute; or
- (D) of alarm monitoring services;
- (2) of two-way interactive video services or Internet services over dedicated facilities to or for elementary and secondary schools as defined in section 254(h)(5) of this title;
- (3) of commercial mobile services in accordance with section 332(c) of this title and with the regulations prescribed by the Commission pursuant to paragraph (8) of such section;
- (4) of a service that permits a customer that is located in one LATA to retrieve stored information from, or file information for storage in, information storage facilities of such company that are located in another LATA;
- (5) of signaling information used in connection with the provision of telephone exchange services or exchange access by a local exchange carrier; or
- (6) of network control signaling information to, and receipt of such signaling information from, common carriers offering interLATA services at any location within the area in which such Bell operating company provides telephone exchange services or exchange access.

³ See *In Re: Application of BellSouth Long Distance, Inc. for a Certificate of Convenience and Necessity to Provide Operator Services and Resell Interexchange Telecommunications Services in Tennessee*, Docket No. 97-01404, *Order Granting in Part and Denying in Part Application for Certificate of Public Convenience and Necessity*, 5-6 (May 4, 1999).

⁴ *In the Matter of Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Tennessee and Florida*, WC Docket No. 02-307.

⁵ 47 U.S.C. § 271(d)(2)(B).

Several parties intervened in Docket No. 97-01404.⁶ During a Hearing on the merits conducted on April 28, 1998, the interveners argued that the Authority should deny BSLD's application on the ground that it was premature.⁷ The interveners stated that BellSouth must first receive Section 271 approval from the FCC before seeking authority to provide long distance service from the TRA.⁸ The interveners argued that the Authority is limited to granting a CCN for BSLD to provide only the incidental interLATA services specified in Section 271(g) of the Act.⁹ The interveners also stated that the TRA has no authority to issue a contingent certificate authorizing BSLD to provide services in the future that are prohibited by federal law.¹⁰

Following the April 28, 1998 Hearing, the Authority granted BSLD's August 1, 1997 application in part and denied the application in part.¹¹ The Authority granted BSLD's application to the extent that BSLD was authorized to provide only resold incidental interLATA services as defined in Section 271(g) of the Act and resold intraLATA toll services.¹² However, the Authority denied BSLD's request for authority to provide resold in-region interLATA services other than the incidental services identified in Section 271(g) of the Act.¹³ The Authority issued an *Order Granting in Part and Denying in Part Application for Certificate of Public Convenience and Necessity* on May 4, 1999.

⁶ AT&T Telecommunications of the South Central States, Inc., NEXLINK Tennessee, LLC, MCI Telecommunications Corporation, Time Warner Communications of the Mid-South, LP, the Communications Workers of America, AFL-CIO, and TCG Mid South, Inc. sought and were granted intervention in Docket No. 97-01404.

⁷ *Order Granting in Part and Denying in Part Application for Certificate of Public Convenience and Necessity*, 6 (May 4, 1999).

⁸ *Id.*

⁹ *Id.*, p. 7.

¹⁰ *Id.*

¹¹ *Id.*, p. 9.

¹² *Id.*

¹³ *Id.*

BellSouth Long Distance, Inc.'s October 17, 2002 Application

BSLD filed the *Application* which is the subject of this docket on October 17, 2002. In the *Application*, BSLD requests that the Authority modify its CCN to permit it to provide operator and interLATA toll services in Tennessee. In its *Application*, BSLD states that circumstances have changed since the Authority approved its CCN on a limited basis in Docket No. 97-01404, most notably with regard to BellSouth's Section 271 application for Tennessee. BSLD states:

The Authority has recently approved BellSouth's Statement of Generally Available Terms, found BellSouth to have complied with the 14-point checklist set forth in Section 271, and found BellSouth to be in compliance with the separate affiliate requirements of Section 272. The Authority also voted unanimously to recommend to the FCC that BellSouth's 271 application be approved.¹⁴

Additionally, BSLD states that the FCC is expected to rule on BellSouth's Section 271 application for Tennessee on or before December 19, 2002.¹⁵ As a result, BSLD requests that the Authority modify its existing CCN to allow it to provide interLATA long distance services in Tennessee contingent upon the FCC's anticipated approval of BellSouth's Section 271 application for Tennessee.¹⁶ BSLD states that it will not provide interLATA services in Tennessee until the FCC has issued an order approving BellSouth's Section 271 application and the FCC's order has gone into effect.¹⁷ However, BSLD requests that the Authority approve the modification of its CCN so that it may begin reselling operator and toll services in Tennessee immediately upon receiving FCC

¹⁴ *Application of BellSouth Long Distance, Inc. for Approval of a Modified Certificate of Public Convenience and Necessity*, Docket No. 02-01169, October 17, 2002, p. 2 (the "*Application*").

¹⁵ *Id.*, p. 1. December 19, 2002 is the statutory deadline for the FCC's determination with regard to BellSouth's 271 application for Tennessee, as provided in Section 271(d)(3) of the Act, 47 U.S.C. § 271(d)(3).

¹⁶ *Id.*, p. 2.

¹⁷ *Id.*

approval.¹⁸ No party sought intervention in this docket.

Findings and Conclusions

I. Changed Circumstances Following BellSouth Long Distance, Inc.'s August 1, 1997 Application

In its May 4, 1999 Order in Docket No. 97-01404, the Authority stated:

The Authority finds that approval at this time of BSLD's application regarding the interLATA services other than those incidental services identified in Section 271(g) of the Federal Act would amount to a contingent certificate. The contingency would be approval by the FCC of BST's Section 271 application. BSLD cites no statutory authority or precedential authority to support the granting of a contingent certificate. Further, the United States Supreme Court has ruled that:

A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or may not occur at all.¹⁹

Thus far, no Bell Operating Company has been able to convince the FCC that it has met all the requirements of the Act to be allowed to offer interLATA long distance service in any state. BST has failed in three attempts to receive Section 271 relief to provide interLATA services even with positive recommendations of the respective State Utility Commissions in South Carolina and twice in Louisiana. When BST might clear this hurdle is unknown. Accordingly, the Directors deny BSLD's request for authority to provide services that may be allowed after the FCC grants BST 271 relief.²⁰

Significant changes have taken place since BSLD's August 1, 1997 application in Docket No. 97-01404. Unlike the circumstances at the time of the August 1, 1997 application, BellSouth has a Section 271 application for Tennessee pending before the FCC that must be decided by December 19, 2002. The TRA has found in Docket No. 97-00309 that BellSouth complies with the requirements of Section 271 and has

¹⁸ *Id.*

¹⁹ *Texas v. United States* 118 S. Ct. 1257 (1998) (Footnote in original).

²⁰ *Order Granting in Part and Denying in Part Application for Certificate of Public Convenience and Necessity*, 8-9 (May 4, 1999).

recommended that the FCC approve BellSouth's Section 271 application for Tennessee.²¹

The United States Department of Justice has likewise recommended approval of BellSouth's Section 271 application for Tennessee.²²

It is now reasonable to anticipate that BellSouth will receive approval from the FCC to provide non-incidental, interLATA long distance services in Tennessee on or before December 19, 2002. Whereas at the time of BSLD's application in Docket No. 97-01404, the FCC had on three (3) occasions (twice for Louisiana and once for South Carolina) denied Section 271 applications filed by BellSouth,²³ the FCC has now approved BellSouth's Section 271 applications for seven (7) states, including Louisiana and South Carolina.²⁴ Further, the FCC has found that BellSouth's operational support systems (OSS) are the same throughout the BellSouth region,²⁵ and thus it is reasonable to conclude that the FCC will also find that BellSouth's OSS for Tennessee are also nondiscriminatory.

II. Compliance with Tenn. Code Ann. §§ 65-4-201(c) and 65-5-212

The Authority's May 4, 1999 Order in Docket No. 97-01404 stated the following findings which are required for the granting of a CCN:

²¹ See *In Re: BellSouth Telecommunications, Inc. Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 97-00309, Advisory Opinion of the Tennessee Regulatory Authority to the FCC Relating to BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996, 47 (October 10, 2002).

²² *In the Matter of Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Florida and Tennessee*, WC Docket No. 02-307, Evaluation of the Department of Justice (October 25, 2002).

²³ See *Order Granting in Part and Denying in Part Application for Certificate of Public Convenience and Necessity*, 9 (May 4, 1999).

²⁴ See *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, 17 F.C.C.R. 9018 (2002) (Memorandum Order and Opinion) ("FCC Georgia/Louisiana Order"); *In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, 17 F.C.C.R. 17,595 (2002) (Memorandum Order and Opinion).

²⁵ FCC Georgia/Louisiana Order, 17 F.C.C.R. 9018, at 9068.

[B]ased on a review of of BSLD's application and the entire record in this matter, the Authority finds that BSLD satisfies the managerial, financial and technical requirements contained in Tenn. Code Ann. § 65-4-201(c). Further, pursuant to the additional requirements of Tenn. Code Ann. § 65-4-201(c), the Authority finds that BSLD has demonstrated its willingness to adhere to all applicable policies, rules and orders. Additionally BSLD has filed an acceptable small and minority-owned telecommunications business participation plan pursuant to Tenn. Code Ann. § 65-5-212.²⁶

The Authority is not aware of, nor has any person submitted to the Authority, any evidence that would require the Authority to qualify, alter, or rescind these findings. Therefore, the Authority finds that BSLD continues to meet the requirements of Tenn. Code Ann. §§ 65-4-201(c) and 65-5-212.

III. Section 272 Affiliate Safeguards

Additional support for granting a modification of BSLD's CCN comes from actions taken by BellSouth to comply with the affiliate safeguards contained in Section 272 of the Act.²⁷ Section 272(a)(1) requires a Bell operating company to offer interLATA long distance services through an affiliate separate and independent of the entity that offers local services and interconnection services to competitors. BSLD serves as BellSouth's separate long distance affiliate as required by Section 272. Section 272 further provides that all transactions between the Bell operating company and its long distance affiliate must be conducted on an arm's-length basis and may not discriminate between the Bell operating company or its affiliate and other providers.²⁸ As part of the testimony it presented in Docket 97-00309, BellSouth presented audited consolidated financial statements²⁹ attesting that BellSouth is complying with the FCC's affiliate transaction

²⁶ *Order Granting in Part and Denying in Part Application for Certificate of Public Convenience and Necessity*, 7-8 (May 4, 1999).

²⁷ 47 U.S.C. § 272.

²⁸ 47 U.S.C. §§ 272(b)(5) and 272(c).

²⁹ Direct Testimony of John A. Rusoilli, Docket 97-00309, April 26, 2002, Exhibit JAR-16.

rules.³⁰ The Authority concluded from this evidence that BellSouth had sufficiently demonstrated its willingness to comply with the requirements of Section 272.³¹

The Authority also concluded in Docket No. 97-00309³² that BellSouth demonstrated that it is meeting the structural separations requirements of Section 272(b) of the Act.³³ The testimony of BellSouth witness John A. Ruscilli, submitted in Docket No. 97-00309, states that: (1) BSLD is maintaining books, records, and accounts separate from the books, records, and accounts maintained by BellSouth; (2) BSLD accounting structure complies with the FCC's Uniform System of Accounts; (3) BSLD has officers, directors, and employees separate from those of BellSouth; and (4) no creditor of BSLD has any recourse to the assets of BellSouth.³⁴

Another safeguard included in the Act is a biennial audit to determine whether a Bell operating company is in compliance with safeguards and requirements of Section 272. Once a Bell operating company is authorized to provide in-region interLATA services in any of its incumbent states, Section 272(d)(1) of the Act requires that such an audit be conducted every two (2) years by an independent auditor.³⁵ A joint federal/state oversight team ("JOT") will be responsible for overseeing the work of the auditors.³⁶

Pursuant to Section 272(d)(1) of the Act, BellSouth will select an independent accounting firm to perform the biennial audit, and the TRA will receive the results of the

³⁰ 47 C.F.R. §§ 64.901 - 64.904.

³¹ *In Re: BellSouth Telecommunications, Inc. Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, Docket No. 97-00309, *Advisory Opinion of the Tennessee Regulatory Authority to the FCC Relating to BellSouth Telecommunications, Inc.'s Entry Into Long Distance (InterLATA) Service in Tennessee Pursuant to Section 271 of the Telecommunications Act of 1996*, 45 (October 10, 2002).

³² *Id.*

³³ 47 U.S.C. § 272(b).

³⁴ Direct Testimony of John A. Ruscilli, Docket 97-00309, April 26, 2002, Exhibit JAR-16.

³⁵ 47 U.S.C. § 272(d)(1).

³⁶ *Id.*

audit and make them available for public inspection as required by Section 272(d)(2) of the Act.³⁷ This Section also allows any party to submit comments on the final audit report.³⁸

Based upon the above findings, the Authority finds that BellSouth and BSLD have sufficiently demonstrated their willingness and ability to comply with the separate affiliate requirements of 47 U.S.C. 272 and the FCC's affiliate transaction rules.

Summary of Findings and Conclusion

Based upon a careful review of the *Application*, and of the entire record in this matter, the Authority finds that BSLD's *Application* presents to the Authority a significantly different set of circumstances from those prevailing at the time of BSLD's August 1, 1997 application. In light of these altered circumstances, the Authority finds that modification of BSLD's CCN to include the authority to provide interLATA long distance services in Tennessee, contingent upon the FCC's anticipated approval of BellSouth's Section 271 application for Tennessee, is justified. BellSouth has asserted that the required affiliate safeguards are in place, and the JOT is in place to confirm this assertion and verify that the safeguards are in effect. The Authority's findings regarding BSLD's compliance with Tenn. Code Ann. §§ 65-4-201(c) and 65-5-212, as stated in the Authority's May 4, 1999 Order in Docket No. 97-01404, remain valid. Finally, FCC approval of BellSouth's Section 271 application for Tennessee is no longer a remote contingency, as the Authority found in Docket No. 97-01404, but is instead a condition likely to be met in the near future. The Authority thus concludes that modification of BSLD's CCN based on the condition of FCC approval is no longer an unwarranted reliance on a contingency and is no longer impermissible under the standard of *Texas v.*

³⁷ 47 U.S.C. § 272(d)(2).

³⁸ *Id.*

United States, 118 S. Ct. 1257 (1998).

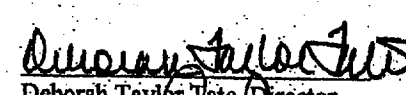
Accordingly, at the November 18, 2002 Authority Conference, the voting panel voted unanimously to approve BSLD's *Application* to provide interLATA long distance services in Tennessee, contingent upon the FCC's approval of BellSouth's Section 271 application for Tennessee.³⁹

IT IS THEREFORE ORDERED THAT:

1. The *Application* of BellSouth Long Distance, Inc. for a modification of its certificate of public convenience and necessity to allow Bellsouth Long Distance Inc. to provide interLATA long distance services in Tennessee is approved contingent upon the Federal Communications Commission's approval of BellSouth's application, pursuant to 27 U.S.C. § 271, for authority to provide long distance service in Tennessee.

2. Any party aggrieved by the Authority's decision in this matter may file a Petition for Reconsideration within fifteen (15) days from and after the date of this Order.


Sara Kyle, Chairman


Deborah Taylor Tate, Director


Pat Miller, Director

³⁹ The Authority made its findings and reached its decision with regard to BSLD's *Application* based on the reasonable expectation that the FCC would grant BellSouth's Section 271 *Application* for Tennessee. Since the Authority's action, the FCC has, in fact, granted BellSouth's Section 271 *Application* for Tennessee. See *In the Matter of Joint Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Florida and Tennessee*, WC Docket No. 02-307, *Memorandum Order and Opinion* (December 19, 2002).